

## Department of State

## § 127.8

United States Code. Whenever it is known or there is probable cause to believe that any defense article is intended to be or is being or has been exported or removed from the United States in violation of law, such article and any vessel, vehicle or aircraft involved in such attempt is subject to seizure, forfeiture and disposition as provided in section 401 of title 22 of the United States Code.

(b) Similarly, an attempt to violate any of the conditions under which a temporary export or temporary import license was issued pursuant to this subchapter or to violate the requirements of § 123.2 of this subchapter also constitutes an offense punishable under section 401 of title 22 of the United States Code, and such article, together with any vessel, vehicle or aircraft involved in any such attempt is subject to seizure, forfeiture, and disposition as provided in section 401 of title 22 of the United States Code.

### § 127.7 Debarment.

(a) In implementing section 38 of the Arms Export Control Act, the Assistant Secretary of State for Politico-Military Affairs may prohibit any person from participating directly or indirectly in the export of defense articles, including technical data or in the furnishing of defense services for which a license or approval is required by this subchapter for any of the reasons listed below. Any such prohibition is referred to as a debarment for purposes of this subchapter. The Assistant Secretary of State for Politico-Military Affairs shall determine the appropriate period of time for debarment, which shall generally be for a period of three years.

(b) Grounds. (1) The basis for a statutory debarment, as described in paragraph (c) of this section, is any conviction for violating the Arms Export Control Act (see § 127.3 of this subchapter) or any conspiracy to violate the Arms Export Control Act.

(2) The basis for administrative debarment, described in part 128 of this subchapter, is any violation of 22 U.S.C. 2778 or any rule or regulation issued thereunder when such a violation is of such a character as to provide a reasonable basis for the Office of Defense Trade Controls to believe that

the violator cannot be relied upon to comply with the statute or these rules or regulations in the future, and when such violation is established in accordance with part 128 of this subchapter.

(c) *Statutory Debarment.* Section 38(g)(4) of the Arms Export Control Act prohibits the issuance of licenses to persons who have been convicted of violating the U.S. criminal statutes enumerated in § 120.27 of this subchapter. Discretionary authority to issue licenses is provided, but only if certain statutory requirements are met. It is the policy of the Department of State not to consider applications for licenses or requests for approvals involving any person who has been convicted of violating the Arms Export Control Act or convicted of conspiracy to violate that Act for a three year period following conviction. Such individuals shall be notified in writing that they are debarred pursuant to this policy. A list of persons who have been convicted of such offenses and debarred for this reason shall be published periodically in the FEDERAL REGISTER. Debarment in such cases is based solely upon the outcome of a criminal proceeding, conducted by a court of the United States, that established guilt beyond a reasonable doubt in accordance with due process. The procedures of part 128 of this subchapter are not applicable in such cases.

(d) *Appeals.* Any person who is ineligible pursuant to paragraph (c) of this section may appeal to the Under Secretary of State for International Security Affairs for reconsideration of the ineligibility determination. The procedures specified in § 128.13 of this subchapter are applicable in such appeals.

### § 127.8 Interim suspension.

(a) The Director of the Office of Defense Trade Controls is authorized to order the interim suspension of any person when the Director believes that grounds for debarment (as defined in § 127.6 of this part) exist and where and to the extent the Director finds that interim suspension is reasonably necessary to protect world peace or the security or foreign policy of the United States. The interim suspension orders prohibit that person from participating directly or indirectly in the export of